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IN THE

SUPREME COURT OF THE UNITED STATES

No. 630

ALLEN M. WILLIAMS, also known as Clyde Walter Huntsworth and Fred Westley Anderson,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

No. _____

RICHARD CHARLES MEIER, also known as George E. Richmond,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Petitioners, Allen M. Williams and Richard Charles Meier, pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled cases on September 30, 1963.

CITATIONS TO OPINION BELOW

The opinion of the Court of Appeals of September 30, 1963, is not reported but is set forth in Appendix A, *infra*, pages A1-A9.

JURISDICTION

The Judgment of the Circuit Court of Appeals was entered on September 30, 1963, and is set forth in Appendix B, *infra*, pages A10-A11.

A timely Petition for Rehearing was filed on October 10, 1963, was denied on October 18, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). Rule 22(2), Rules of the Supreme Court and Rule 37(b) of the Federal Rules of Criminal Procedure and Rule 41(e) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED.

1. Were the defendants arrested without probable cause.

2. Were the defendants illegally restrained of their liberties.

3. Were the defendants illegally arrested without a warrant.

4. Were the defendants illegally restrained of their rights of counsel.

5. Did the District Court illegally overrule the Motion to Suppress Evidence of defendants.

6. Was the evidence against defendants illegally obtained.

7. Were the rights of defendants properly protected, as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

8. Were the rights of defendants protected, as guaranteed by the Constitution of the State of Wyoming.

9. Can defendants be held on any trumped-up charge just to keep them in custody while they are being investigated.

10. Must a Motion to Suppress Evidence be raised continuously throughout the trial, once the Court has ruled on it.

11. Is the misconduct of the United States Attorney, in making mis-statements and prejudicial statements to the jury, cured by primary objections and by the Court advising the jury to disregard the statements after the ears of the jury have once heard the prejudicial statements.

12. Must defense counsel qualify the State's witnesses when an objection is raised as to qualifications, as directed by the trial judge.

13. Are the rights of defendants adequately protected when repetitious misconduct of the prosecuting attorney is present and where improper evidence has been let in, even though any one particular misconduct or improper evidence would not be prejudicial but the summation and the sum total of the same would be highly prejudicial.

STATUTES INVOLVED

The statutory provisions involved are, Title 18, U.S.C., Section 2312. Said section is printed in Appendix C, *infra*, page A12.

STATEMENT

Appellants as co-defendants, Allen M. Williams and Richard Charles Meier, hereinafter referred to as Williams and Meier, were charged in separate counts by Information, having waived a Grand Jury indictment, of the charge of violation of Title 18, U.S.C., §2312 (interstate transportation of stolen motor vehicle), that they did unlawfully and willfully transport, cause to be transported, and did aid and assist in transporting in interstate commerce a stolen 1961 Cadillac Tudor Sedan, white in color, vehicle identification number 61G-128725, engine number 16X-128935, bearing 1962 Nebraska license 2-53985, the property of J. C. Lunsford, Portland, Oregon, from Portland, Oregon to Laramie, Wyoming, knowing the same to have been stolen.

For the purpose of convenience, reference to the Transcript of the Record is referred to as (R.). Reference to the Petition for Rehearing is referred to as (PR.).

Williams and Meier were tried together before a jury on November 14, 1962, and were convicted of the count in said indictment. On December 7, 1962, Williams was sentenced to imprisonment for a period of four (4) years and Meier was sentenced to imprisonment for a period of three (3) years.

Appellants Williams and Meier were jointly tried before a jury, commencing on November 13, 1962. Immediately prior to the trial on November 13, 1962, at 9:00 A.M. defendants filed a Motion to Suppress Evidence under Rule 41(e) and the Court did consider said Motion when the same was again raised during testimony of the second witness presented by the Government, Kenneth R. Lankford, the Motion was to suppress all of the evidence ob-

tained from the stolen vehicle. The court considered the Motion to Suppress Evidence (R. 22) and proper exceptions were taken.

Appellants' Motion for Judgment of Acquittal to the indictment was denied, on November 14, 1962, defendants were convicted by the jury as charged in the information.

An appeal duly filed followed to the Court of Appeals to the Tenth Circuit which was denied. A timely Petition for Rehearing was filed by appellants and the same was denied. The Petition for Rehearing sought review of the Court's action in denying the relief sought by the appeal and the Motion for Rehearing which was duly presented.

The evidence adduced as to appellants during the trial was as follows: On or about May 11, 1962, at about 12:05 in the afternoon, Williams approached the assistant County Clerk of Albany County, Wyoming, with the intention of obtaining a title or permit to drive a vehicle through the State of Wyoming. While attempting to obtain the title or permit Williams presented two documents to the assistant clerk, Mrs. Cornelius, Exhibits 1 and 2 (R. 59) which were a Georgia registration and a bill of sale from the State of Georgia. Mrs. Cornelius stated that the vehicle had to be physically inspected. Williams informed her that the vehicle was not available for inspection (R. 11). On cross-examination (R. 12) Mrs. Cornelius stated that it was not customary that the vehicle be physically inspected before license is issued or changed. Mrs. Cornelius advised Williams that they would have to proceed to the sheriff's office so that he could check it out further. When they arrived at the sheriff's office the deputy sheriff, Kenneth R. Lankford, met them and Mrs. Cornelius left. Mr. Williams was detained in the deputy

sheriff's office, by the deputy sheriff, Mr. Lankford, until Williams would identify himself (R. 25).

Mr. Lankford booked defendant Williams for an offense of "investigation of auto theft", there being no such offense (R. 26).

The vehicle for which Williams was trying to get a permit to go through the State of Wyoming was a 1962 Cadillac. The vehicle which Williams and Meier were driving was a 1961 Cadillac, white in color.

Williams advised Lankford that the 1962 Cadillac was black. Lankford stated that the 1962 Cadillac was white because that is what Jack E. Rickards of the National Auto Theft Bureau was supposed to have advised him. However, in truth and in fact, Jack E. Rickards advised Lankford, by telephone, that the vehicle, the 1962 Cadillac was not stolen and that the same was black, which corresponded with the testimony given by Williams (R. 15/16) and that in the testimony given by Jack E. Rickards (R. 4), he advised the deputy sheriff, Kenneth R. Lankford, that the vehicle was black in color as reflected (PR. 6).

Kenneth R. Lankford testified that he had no warrant to arrest Williams or to search the motor vehicle (R. 16). Jack E. Rickards testified that he received information that the 1961 Cadillac was stolen on May 15, 1962, and that this information was furnished to Kenneth R. Lankford four days after, which was on the 15th day of May 1962. This was four days after Williams and Meier were taken into custody. Rickards further testified that Kenneth R. Lankford stated that they would be unable to hold the individual, and that they wanted a rush report, fully indicating that they knew they were illegally holding the appellants Williams and Meier (R. 35).

Defendant Meier, appellant herein, was seen walking outside the county building in Laramie, Wyoming, near a 1961 white Cadillac and he was approached by the deputy sheriff and was stopped and then searched and taken into custody, put under arrest for no apparent reason and was then charged with carrying a concealed weapon after he had been placed under arrest on a pretense. The concealed weapon was given to the deputy sheriff at the sheriff's office at the time Meier emptied his pockets (R. 16/17).

On May 14, 1962, the FBI agent, Robert C. Gustafson, talked to Williams and Meier and at that time Williams was given his first opportunity to contact an attorney. Williams at that time asked Mr. Gustafson to allow him to call an attorney which was allowed and Williams called an attorney in Laramie, Wyoming, by the name of Earl Williams who was not in his office (R. 27).

Mr. Gustafson examined the 1961 Cadillac on May 14, 1962, which was four (4) days after the arrest, without a search warrant, and extracted various evidence therefrom which was presented in Court.

The Court allowed Jack E. Rickards to testify from reports of the National Auto Theft Bureau and investigation conducted by the said Bureau (R. 34). Improper evidence.

Mr. Rickards stated that the 1962 Cadillac was not stolen and that he received information that the 1961 Cadillac was stolen on May 15, 1962, which was four days after defendants had been held in jail on investigation of auto theft.

Appellant Meier, when asked by U. S. Attorney Chaffin, if a Mrs. Ridley, a lady known by Meier, was a drug addict. This was improper and prejudicial to the

jury (R. 49). Mr. Chaffin also asked an improper question on cross-examination "if I told you that your thumb print was on it, would you then remember that you had handled it?" Defendants' counsel made a Motion for Mistrial which was overruled by the Court.

In closing arguments, the U. S. Attorney stated that "when a defendant pleads not guilty, that is something that he has to sustain in order to prove himself not guilty." Ths was improper and a plain error (R. 49).

Further, the U. S. Attorney misquoted a law when he stated "Now, another thing to consider relative to each one of the defendants, that each one of them was apprehended on May 11, 1962, either in the process of committing a felony or trying to commit a felony." Objection was properly interposed to that statement and there was no evidence that a "felony was being committed" or that "the crime was a felony" in any way whatsoever at the time. The Court sustained the objection as to the felony party (R. 49). Plain error under Rule 52(b), Federal Rules of Criminal Procedure.

The U. S. Attorney again committed an error when he asked the jury to compare the signatures of the "Clyde W. Huntsworth" when there had been no evidence as to signatures and there had been no question or issue as to whether the signatures were the defendant Williams'. Further tending to prejudice the jury (R. 50).

The U. S. Attorney again went outside the evidence when he stated "I know that at 5:00 o'clock in the morning on May 9th you don't need any street lights to look in the back of any automobile, because it is light at that time of day." (R. 50). Again going outside the evidence, there was no evidence whatsoever, as to the light at that time of the morning.

Again (R. 51) the U. S. Attorney stated in his closing argument "the calibre of the witness is not the same calibre as government's witnesses." Again, improper comments.

All of the above being prejudicial error and plain error under Rule 52(b) of the Federal Rules of Criminal Procedure and not correctable by any direction of the Court to the jury to disregard the comments.

The Court misunderstood and misquoted the evidence when the District Court stated that there was probable cause to arrest the defendants and the Motion to Suppress Evidence was overruled on the finding by the Court that the government witness Lankford first made a determination that the vehicle was stolen and that he then put the defendants under arrest, which was not true as reflected in (R. 22) where the Court stated "we have this situation, as I view it, before arrest was made of either of the defendants they had checked and determined that the car mentioned in these documents was a stolen automobile and that constituted probable cause. If an individual is found in an automobile that is stolen, that is all you need for probable cause." (R. 22). Defense attorney advised the Court that the automobile was not identified as being stolen until later on the 15th day of May, four days after the original arrest (R. 22).

The Court again stated "I thought in the afternoon he called Denver and got information that the car was stolen." (R. 22). The Court further stated "Now, whether it was the car in New York or the car here, it doesn't make a bit of difference, if these parties here in any way were connected with an automobile that was stolen, that in itself, would constitute probable cause, that is elementary law." (R. 22). Defense attorney continued "But, they did not have that information, Your Honor, until later on in

the afternoon. You see, when they approached this boy, they did not have that information, when they approached Mr. Meier, they did not have that information, that was all suspicion, they didn't have it cleared or checked with the Bureau." The Court stated "Well, you couldn't detect it if you hadn't picked him up, you can't walk down the street behind an individual and detect it." "Overruled, I am ready to rule." The Court then cited. The 1961 Cadillac that the appellants were driving through Wyoming was not discovered to be stolen until May 15, 1962, when the report was made by Jack E. Rickards, the agent for National Auto Theft Bureau.

Therefore, the Court was mistaken and confused on ruling on the Motion to Suppress Evidence and had made up its mind and would not change its thinking.

As the result of the Court's ruling on the Motion to Suppress Evidence (R. 22) the defendants had no further reason to object to or interpose the Motion throughout the balance of the trial, in accordance with Rule 46. The Motion to Suppress Evidence (R. 6) was directed to all evidence taken from the vehicle.

REASONS FOR GRANTING THE WRIT.

1. That defendants Allen M. Williams and Richard Charles Meier were illegally arrested, illegally arrested without a warrant and illegally restrained of their liberties and their rights of counsel under the Due Process Clause as guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States of America, as follows:

(AMENDMENT V)

(Rights of Accused in Criminal Proceedings)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment

or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(AMENDMENT XIV)

Section 1.

(Citizenship Rights Not to Be Abridged by States)

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It is respectfully submitted that the Record is replete with the showing that the defendants were restrained of their liberty without due process of law, illegally held from May 11, 1962 through May 17, 1962, that they were held for four days on false charges just for the purpose of holding them until an investigation could be concluded.

That the original 1962 Cadillac which was being investigated, was found to have never been stolen and the authorities discovered four days later that the 1961 Cadillac was stolen. Therefore, defendants were deprived of their rights under the Due Process Clause in the Fourth Amendment to the Constitution of the United States of America.

In *Mapp* v. *Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, the court held:

> "As a matter of due process, evidence obtained by a search and seizure in violation of the Fourth Amendment is inadmissible in a State Court as it is in a Federal Court. Hereby overruling Wolf v. Colorado, 338 U.S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359."

In *Wong Sun* v. *United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441, the Supreme Court of the United States stated:

> "A vague suspicion cannot be transformed into probable cause for arrest by reason of the suspect's ambiguous conduct which the arresting officers themselves have provoked."

The Court further stated:

> "An officer may not make an arrest in his own unchecked discretion upon information too vague and from too untested a source, to permit a judicial officer to accept it as probable cause for an arrest warrant. * * * The history of the use, and not infrequent abuse, of the power to arrest, cautions that a relaxation of the fundamental requirements of probable cause would leave law-abiding citizens at the mercy of the officers' whim or caprice."

2. That defendants Allen M. Williams and Richard Charles Meier, were illegally arrested, illegally arrested without a warrant and illegally restrained of their liberties and their rights of counsel as guaranteed by the Constitution of the State of Wyoming.

It is respectfully submitted that the defendant Allen M. Williams was restrained in the sheriff's office when he went down to the office in conjunction with the County Clerk to check out the title to a motor vehicle; he was held

for four days in the County Jail. In addition thereto, defendant Meier was stopped on the street and asked to show identification and then told that it was believed that the vehicle he was driving was stolen and they searched him on the street and had his keys taken from him and he was then taken into the sheriff's office and arrested.

Article 1, Section 4, W. S., 1957, the Constitution of the State of Wyoming reads as follows:

> "Security Against Search and Seizure. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized."

In *State* v. *Munger*, 43 Wyo. 404, 4 P.2d 1094, the court stated:

> "As a general rule, a search and seizure is unlawful, except when made under a warrant issued in conformity with the law."

In *Tobin* v. *State*, 36 Wyo. 368, 255 Pac. 788, the court stated:

> "In order to show consent to search without warrant, which would otherwise be illegal, testimony must show that the consent was really voluntary with a desire to invite search, and not merely to avoid resistance."

Under Article 1, Section 6 of the Constitution of the State of Wyoming, W. S., 1957, the section reads as follows:

> "Due Process of Law.--No person shall be deprived of life, liberty or property without due process of law."

Under Article 1, Section 7 of the Constitution of the State of Wyoming, W. S., 1957, the section reads as follows:

> "No Absolute, Arbitrary Power.—Absolute, arbitrary power over the lives, liberty and property of free men exists nowhere in a republic, not even in the largest majority."

In Article 1, Section 10 of the Constitution of the State of Wyoming, W. S., 1957, the section reads as follows:

> "Right of Accused to Defend.—In all criminal prosecutions the accused shall have the right to defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process served for obtaining witnesses, and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

3. The defendants Allen M. Williams and Richard Charles Meier were illegally held in confinement and restrained of their liberty and illegally arrested by the State of Wyoming and illegally held for prosecution by the United States Government.

It is respectfully submitted that defendants were held on a false charge, against their will, and restrained of their liberties until the Federal Government could take over the defendants and charge them with illegally transporting a stolen vehicle in interstate commerce.

In *State* v. *Michaels*, 374 P.2d 989, the Supreme Court of Washington held unlawful:

> "A search made of an automobile to ascertain whether it contained contraband property, with the

arrest of a driver for a traffic violation, which preceded the search, was made for the sole purpose of searching the vehicle."

The Court ruled as follows:

"The driver charged with illegal possession of gambling equipment found in the car as a result of the search, had standing to claim the protection of the constitutional guarantee against unreasonable searches and seizures, as against the state's contention that, because he alleged that the automobile belonged to his wife and because he denied ownership of the gambling equipment, he was not in a position to claim that his constitutional rights were violated. Accordingly, the driver's motion to suppress evidence obtained by the search should have been granted."

In *Dillano* v. *United States*, U. S. Court of Appeals, 10th Circuit, 310 F.2d 680, the Court stated:

"In seeking to establish the defendant's waiver of his constitutional rights and his consent to an otherwise patently unlawful search, the government must prove, by convincing evidence and clear and positive testimony, that consent was given, and must show that there was no duress or coercion, expressed or implied and that consent was unequivocal and specific and was freely and intelligently given."

"The Court will indulge every reasonable presumption against waiver of fundamental constitutional rights concerning searches and seizures on the theory that coercion is implicit in situations where an individual's consent to an otherwise patently unlawful search is obtained under color of the badge."

In *Mapp* v. *Ohio*, *supra*, the court stated as above: evidence obtained by state officers by illegal search and seizure is not admissible in Federal Court against an accused when timely application was made to suppress or exclude the evidence.

4. The evidence submitted in the trial of this case was illegally obtained by the State of Wyoming and illegally used by the United States Government as evidenced in the prosecution of said defendants.

It is respectfully submitted to this Court that defendant Williams was restrained of his liberties and held in confinement without right of counsel and without probable cause; that defendant Meier was stopped on the street without probable cause, searched and arrested on the possibility that he might have been driving a stolen motor vehicle.

Again referring to Article 1, Sections 4, 5 and 6 of the Wyoming Constitution, *supra*. In *Mapp v. Ohio, supra*, the court stated that illegally obtained evidence by a state could not be used in a federal prosecution of a defendant. Further, the abuse of probable cause in *Wong Sun v. United States, supra*, the court stated:

> "Abuse of the power of probable cause, the history of the use and not infrequent abuse, of the power to arrest, cautions that a relaxation of the fundamental requirements of probable cause would leave law-abiding citizens at the mercy of officers' whims and caprice. * * * An arrest with or without a warrant must stand upon firmer ground than mere suspicion, though the arresting officer need not have in hand evidence which would suffice to convict; the quantum of information which constitutes probable cause, evidence which warrant a man of reasonable caution to believe that a felony has been committed, must be measured by the facts of the particular case."

5. The testimony of the United States Government's witness, Kenneth R. Lankford, was illegally admitted into evidence in view of the fact that said testimony was illegally obtained.

It is respectfully submitted to the Court that the testimony obtained by Kenneth R. Lankford was illegally admitted into evidence in view of the fact that said evidence was illegally obtained and that defendant Williams was illegally restrained of his liberties and held in jail for four days without any formal charge being filed against him, and further, defendant Williams was held without probable cause and defendant Meier was arrested on the street without probable cause, searched and arrested on the possibility that the vehicle he was driving, a 1961 Cadillac, might have been stolen.

In *McDonald* v. *United States*, 307 F.2d 272, the court stated:

> "Evidence obtained by state officers during a search, which, if conducted by federal officers, would have violated defendants' immunity from unreasonable search and seizure, is inadmissible over defendants' timely objection thereto and must be excluded."

Said evidence was timely objected to by the filing of Defendants' Motion to Suppress Evidence, on November 13, 1962, prior to the actual trial of the issues involved and the same objection was raised in the *voir dire* examination of Kenneth R. Lankford, Government witness (R. 17).

In *Wong Sun* v. *United States*, *supra*, the court stated:

> "An arrest with or without a warrant must stand upon firmer ground than mere suspicion, though the arresting officer need not have in hand evidence which would suffice to convict; the quantum of information which constitutes probable cause—evidence which would warrant a man of reasonable caution in the belief that a felony has been committed, must be measured by the facts of the particular case."

> "The history of the use and not infrequent abuse of the power to arrest, cautions that a relaxation of the fundamental principles of probable cause would leave law-abiding citizens at the mercy of the officers' whims or caprice."

In *Mapp* v. *Ohio*, *supra*, the court stated that illegally obtained state evidence is not admissible in federal court against an accused, when timely application was made to suppress or exclude the evidence.

6. That the testimony of the United States Government's witness, Robert C. Gustafson, was illegally admitted into evidence on the grounds of hearsay, and further that said witness was allowed to testify, under defense counsel's objection, to matters upon which there was insufficient foundation laid as to his qualifications.

It is respectfully submitted to the Court that on a number of objections made by defense counsel, upon the ground that the witness was not qualified and that insufficient foundation was laid, the court stated that if defense counsel wanted foundation laid he should lay it himself, thus placing the burden on defense counsel to qualify the state's witnesses, thereby putting defense counsel in an embarrassing position before the jury; that it is not the duty of defense counsel to qualify the government's witnesses as to their qualifications in testifying on certain matters (R. 30).

That the evidence which Robert C. Gustafson, the government's witness, testified was illegally obtained; said evidence was obtained on the 1961 Cadillac illegally when defendant Meier was arrested without a warrant and without probable cause and said evidence was used by the government when the same was illegally obtained by Kenneth R. Lankford at the time of the initial arrest of

defendants herein, contrary to the opinion of the court in *Mapp* v. *Ohio, supra,* wherein the court stated that evidence obtained by illegal search and seizure is not admissible in a federal court against an accused, where timely application was made to suppress or exclude the evidence.

The court further stated in *Mapp* v. *Ohio, supra,* that as a matter of due process, evidence obtained by search and seizure in violation of the Fourth Amendment is inadmissible in a state court as it is in a federal court.

7. That the testimony of the United States Government's witness, Jack E. Rickards, was illegally allowed to come into evidence on the grounds that his testimony was based on records in his office which were not prepared by said witness, but were prepared by other parties who were not under his supervision and were purely hearsay and prejudicial to the jury.

It is respectfully submitted to the Court that the testimony of Jack E. Rickards was predicated primarily upon records and reports that his office, the National Automobile Theft Bureau, received from other offices throughout the nation and that said reports were funneled to him at his request and he was unable to testify as to the method by which the reports were gathered nor did he know anything about how they were gathered, nor was he able to say under what conditions the reports were made and whether or not said parties compiling the reports were qualified (R. 33, 34, 35).

The court further allowed the witness to read right from the reports which were not his reports nor were the reports under his own supervision (R. 34). General statements and hearsay information collected in an investigation for the purposes of the business records within the

meaning of the Statute. *Palmer* v. *Hoffman*, 318 U.S. 109; 28 U.S.C., Section 1732.

8. That defense counsel was required by the Court, on several occasions, to qualify United States Government witness, Robert C. Gustafson, as to his qualifications stating if defense counsel raises question of qualification of United States Government witnesses, the burden of qualifying said witnesses then transfers to the defense counsel who raises the questions, which is in error.

It is respectfully submitted to the Court that it is axiomatic to the law that the burden of qualifying Government witnesses is upon the Government and that the burden of qualifying the defense witnesses is upon the defendant; that said ruling by the court herein is in error when the same ruling was made before the jury it forced the defendant to take certain steps and attempt to qualify the witness and in refusing to qualify the witness, defendants were put at a disadvantage before the jury (R. 28, 29).

9. That the United States Attorney, Robert N. Chaffin, committed prejudicial error on his cross-examination of defendant, Richard Charles Meier, when he asked Mr. Meier whether the lady he had associated with was a known drug addict.

It is respectfully submitted to the Court that the jury was unnecessarily prejudiced when the United States Attorney, Mr. Chaffin, asked defendant Meier, on the stand, if he ever lived with Dorothy Ridley and defendant Meier replied that he had (R. 49). Mr. Chaffin then asked defendant Meier if Dorothy Ridley was a drug addict, to which defense counsel objected as having no bearing; the court sustained the objection that the question was prejudicial to the jury on purpose. By Mr. Chaffin ask-

ing defendant Meier if Dorothy Ridley was a known drug addict, the same was merely interposed to prejudice the jury and for no other reason (R. 49).

Mr. Chaffin further prejudiced the jury when he asked defendant Meier, "If I told you that your thumb print was on it, would you then remember that you had handled it?" There was no such evidence in the Record and assuming something not in evidence on cross-examination, and further interposed merely for the purpose of prejudicing the jury (R. 49).

In a case somewhat similar, *Rankin* v. *State of Florida*, 143 So.2d 193, the supreme court stated:

> "If the jury got, from the reading of the question, purportedly asked the witness at the time of the interview, and the answer presumably given and repeated at the trial, a description with which appellant had been charged and convicted, this procedure we cannot sanction, we think it was prejudicial error that requires a reversal of judgment."

10. That the United States Attorney, Robert N. Chaffin, committed prejudicial error when he asked Defendant, Richard Charles Meier, on cross-examination, "If I told you that your thumb print was on it would you then remember that you handled it?", the same not being true and misleading to the court and prejudicial to the jury.

It is respectfully submitted to the Court that the question was primarily interposed by Mr. Chaffin, on cross-examination, purely to prejudice the jury, there being no such evidence presented in court and assuming something not in evidence.

11. That the United States Attorney, Robert N. Chaffin, committed reversible error during his closing

argument in this case when he stated facts that were not in evidence and further when he misquoted the law to the jury. In stating to the jury that when a defendant pleads not guilty, then it is something that he has to sustain in order to prove himself not guilty; and further when he stated to the jury that defendants were in the process of committing a felony or trying to commit a felony at the time they were arrested, which was improper and not correct.

It is respectfully submitted that there has been no showing in this court that at the time the defendants were arrested, that they were in the process of committing a felony or attempting to commit a felony and, thus, assuming something which was not in evidence and was not shown by the prosecuting attorney, and accordingly, assuming something which was not in evidence. Further, the prosecuting attorney wrongly stated to the jury that when a defendant pleads not guilty he then has the duty to sustain the fact he is not guilty and has the duty to prove himself not guilty. This is obviously in error and deliberately misleading to the jury. The prosecuting attorney wrongfully misquoted the evidence to the jury when he stated that the jury could compare the signatures of Clyde W. Huntsworth to the signatures that are on the title and that they could decide for themselves what the defendant was attempting to do.

The prosecuting attorney again went outside the evidence when he stated that he knew that 5:00 o'clock in the morning on May 9 in Washington it was not dark, there being no such evidence in the record and was merely a statement of counsel not being predicated on any evidence whatsoever (R. 49, 50).

12. That the United States District Judge for the District of Wyoming, the Honorable Ewing T. Kerr, com-

mitted reversible error when he instructed the jury as to the law on the witness taking the stand in his own behalf and as to the law on reasonable inference to be drawn from the evidence and upon the law of intent that a person is responsible for the natural and probable consequences of his act.

It is respectfully submitted to the Court that the Honorable Ewing T. Kerr, Judge of the District Court for the District of Wyoming, committed reversible error in instructing the jury that they have a right to take into consideration that they are defendants in this case and that may or may not affect the credibility of the defendants' testimony. The same was improper, that the credibility of the defendants' testimony stands on the same equal par as any other witness; that the instruction was improper. That the instruction on circumstantial evidence was not correct and was improper (R. 56). That the instruction of the natural and probable legitimate consequences of his own acts are not applicable in criminal proceedings, particularly in an instruction as applying to circumstantial evidence.

In *McDonald* v. *United States*, 284 F.2d 232 (C.A.D.C.), the court held:

> "The failure of a trial judge to charge a jury on the presumption of innocence was error. The charge on reasonable doubt did not dispense with the necessity of charging on burden of proof."

In *Holland* v. *United States*, 348 U.S. 121, 75 S. Ct. 127 (1954), where it was contended that it was error for the trial judge to refuse to instruct, that where the government's evidence is circumstantial, it must be such as to exclude every reasonable hypothesis other than that of guilt, the court said:

"The support for this kind of instruction in the lower court decisions, Garst v. U. S., 4 Cir., 180 F. 339, 343, but the better rule is that where the jury is properly instructed on the standard for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect."

13. That the Motion to Suppress Evidence, filed by the defendants, should have been sustained by the court upon the grounds that said evidence was procured through unlawful search and seizure, in violation of the Fourth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America, guaranteeing the right to privacy free from unreasonable state intrusion. The Fourth Amendment to the Constitution of the United States of America states:

(AMENDMENT IV)

(Security from Unwarrantable Search and Seizure)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the Constitution of the United States of America states:

(AMENDMENT XIV)

Section 1.

(Citizenship Rights Not to Be Abridged by States)

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It is respectfully submitted to the Court, in the evidence heretofore recited, that was obtained by the state illegally and used by the Federal Government illegally; that under *Mapp* v. *Ohio, supra,* wherein the court stated:

> "As a matter of due process, evidence obtained by search and seizure in violation of the Fourth Amendment, is inadmissible in a State Court as it is in a Federal Court."

14. That the evidence obtained against the defendants herein was illegally obtained in violation of the protection granted in the Fifth Amendment to the Constitution of the United States of America. The Fifth Amendment states as follows:

(AMENDMENT V)

(Rights of Accused in Criminal Proceedings)

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

15. That defendants were illegally denied rights of counsel in violation of their rights under the Fourth, Fifth

and Fourteenth Amendments to the Constitution of the United States of America.

It is respectfully submitted to the Court that the evidence shows that defendants were held, for four days, without being allowed to contact an attorney, in violation of their rights under the Constitution of the State of Wyoming, Article 1, Sections 4, 5 and 6 and under the United States Constitution, the Fourth, Fifth and Fourteenth Amendments, as recited in the Record at pages 14, 15, 16, 18 and 35, wherein defendants were held upon some fictitious charge merely to be held until the examination could be concluded as to whether the vehicle was or was not stolen, and further, they were not allowed to have counsel until four days after they had been held in jail, or until the time of trial, in violation of their rights under said Constitution.

In *Jones* v. *United States*, 4 L. Ed. 2d 697, 703, the court held that the elements which have caused the dilemma, *i. e.*, that possession both convicts and confers standings, eliminates any necessity for a preliminary showing of an interest in the premises searched or the property seized, which ordinarily is required when standing is challenged. In a case involving a prosecution of illegal possession of narcotics, the court pointed out that to hold that defendant failed to acknowledge interest in narcotics or the premises in which they were seized prevented his attack upon the search would be to permit the Government to have the advantage of contradicting positions of a basis for conviction; that the defendant's conviction flows from the possession of narcotics at the time of the search, and yet the fruits of such a search upon which conviction depends were admitted into evidence on the ground that defendant did not have possession of the narcotics at the time; that the prosecution in the instant

case, thus subjects defendant to the penalty meted out to one in lawful possession while refusing him the remedies designed for want in that situation; that it is not consonant with the amenities of the administration of criminal justice to sanction such squarely contradictory assertions of power by the government; and that the possession on the basis of which defendant was to be and was convicted was sufficient to give him standing under any fair and rational concept of the requirements of Federal Criminal Procedure, Rule 41(e). The court also pointed out that Rule 41(e) should not be applied to allow the Government to deprive the defendant of standing to bring a Motion to Suppress the indictment in general terms while prosecuting for possession.

CONCLUSION

WHEREFORE, it is respectfully urged that for the foregoing reasons herein summarized, there was prejudicial error in the findings of the judgments in the lower court, and the petition for a writ of certiorari should be granted.

Respectfully submitted,

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